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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 805

LURA D. GLASSEY,

Petitioner,

vs.

C. D. HORRALL, Chief of Police of the City of Los Angeles

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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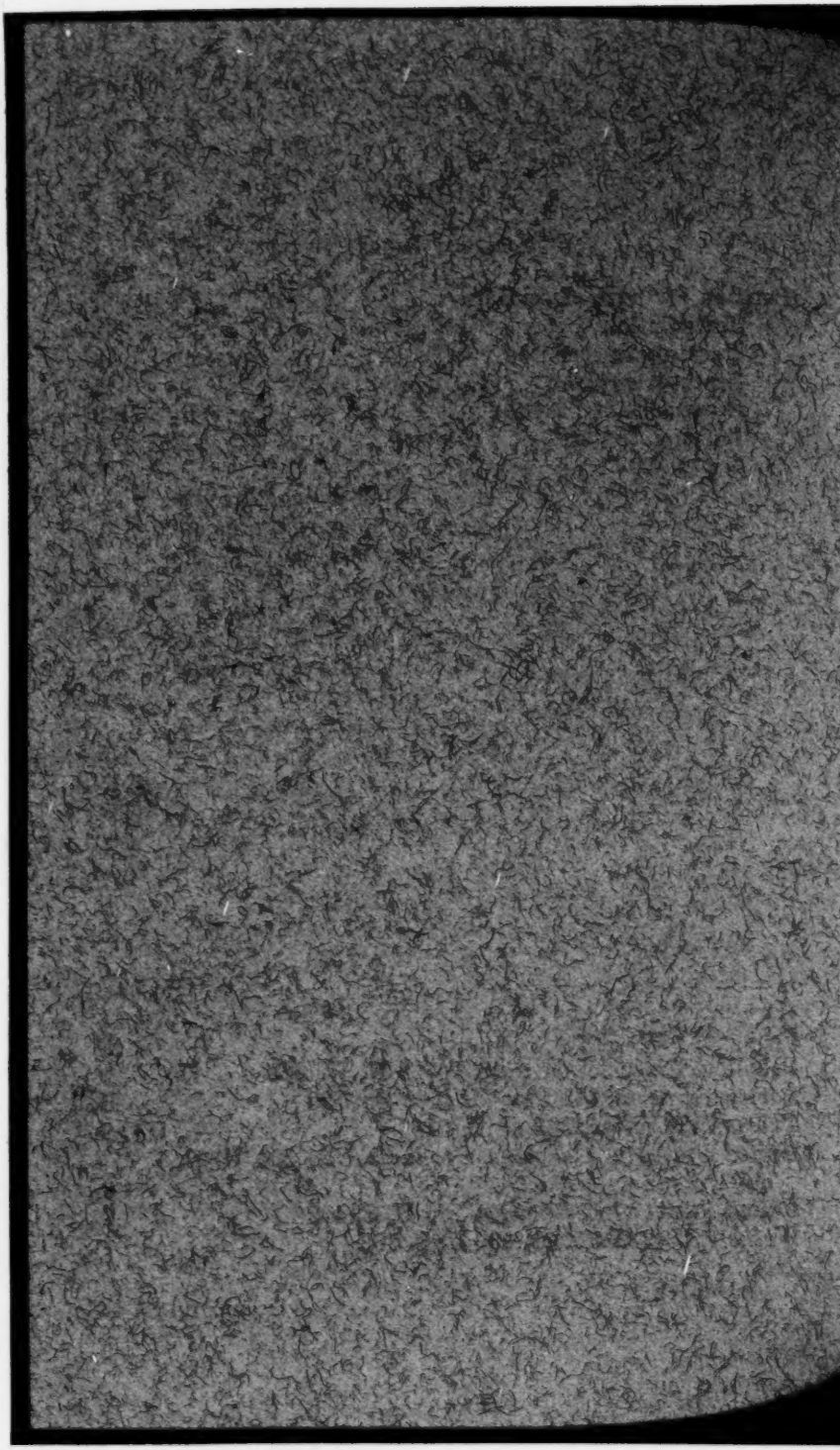

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This petition for a Writ of Certiorari seeks a review of an order of the Supreme Court of the State of California denying without opinion or opportunity for argument a Petition for Writ of *Habeas Corpus*.[1]

In that Petition, petitioner raised the issue that her rights under the due process clause of the 14th Amendment to the United States Constitution were violated by reason of the fact that the ordinance of the City of Los Angeles, under which she was convicted and by reason of which she is incarcerated, denies to her in toto the fundamental right

[1] The original exhibits filed with the State Supreme Court are on file with this Court.

to practice her belief in Nudism without there being a clear and present danger for its proscription.

Jurisdiction

The Order, review of which is sought was made and entered on April 7, 1948. Previous to this petitioner had sought release from the two lower courts in the state that had jurisdiction and was denied in both of them. The State Supreme Court is the highest court in the state to which petitioner can go.[2]

The issue as to which petitioner seeks this court's review involving the constitutionality of Subdivision (H) of Section 47.50 of the Los Angeles Municipal Code under the 14th Amendment to the United States Constitution, was decided adversely to petitioner, over her argument, by the state court.

The jurisdiction of this court is invoked under Section 237 of the Judicial Code, as amended (28 U. S. C. 344 (b)).

Questions Presented

1. Does Subdivision (H) of Section 47.50 of the Los Angeles Municipal Code which prevents the operation of any place where Nudism may be practiced, on its face and as applied to petitioner herein, unconstitutionally restrict petitioner's personal liberty without due process of law within the meaning of Section 1 of the 14th Amendment to the United States Constitution?

2. Does the practice of Nudism pursuant to a sincere belief in the principles of Nudism where there is no showing of obscene or immoral conduct constitute an exercise of freedom of speech, within the guarantee of the Due Process clause of the 14th Amendment?

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[2] Calif. Const., Art. VI, §§ 1, 4, 4c.

Statute Involved

Subdivision (H) of Section 47.50 of the Los Angeles Municipal Code[3] provides:

> It shall be unlawful for any person to operate, manage, or conduct any camp, colony, or other place of resort, wherein three or more persons not all of the same sex are permitted or allowed to commingle in the nude; or wherein persons are permitted or allowed to commingle in the nude; or wherein persons are permitted or allowed to view persons of the opposite sex in the nude.

Statement of the Case

Facts—On August 31, 1946, petitioner was arrested when police officers of the City of Los Angeles went to the premises involved and posed as believers in Nudism (P. 1 of Exh. D of Exh. 1). The officers were admitted only after they employed subterfuge and professed agreement with the principles of Nudism by signing a Registration Form with the fictitious names of "Mr. and Mrs. Robert and Anna Bond." The agreement signed by the police officers is the same one all who desire entrance must agree to. A copy of this form is set forth as Exhibit C of Exhibit 1.

The premises here involved are located at 9804 La Tuna Canyon in Los Angeles, California, about one mile away from the highway; they are surrounded on three sides by high hills and there is no habitation. The premises are run by the Fraternity Elysia, an organization the members of which believe in the principles of Nudism. They believe that great moral and health benefits are to be derived from the practice of Nudism; that their purpose in being in the nude is not to expose themselves to others but to get the benefits of Nudism.

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[3] The Los Angeles Municipal Code is Ordinance 77,000 of the City of Los Angeles.

At the time petitioner was arrested there were men, women and children on the premises—some of whom were in the nude, some of whom wore "G-straps", some of whom wore shorts and some of whom were fully clothed. The activity that was going on consisted of: A lady taking care of the office; two men playing badminton; a girl sitting on the back porch of one of the buildings; three men and one woman walking toward the swimming pool; one woman walking toward a cabin; three men and one woman sunning themselves; a boy about nine years old in the swimming pool; two other children nearby, and two or three men were in the game room.

Decisions Below—The trial court (Municipal Court of the City of Los Angeles) found petitioner guilty and sentenced her to jail for 180 days.

On appeal the Appellate Department of the Superior Court of the State of California affirmed. This court denied Certiorari (— U. S. —, 92 L. ed. (Adv. Op.) 34, Oct. 20, 1947, No. 260, Oct. Term, 1947).

On a Writ of Habeas Corpus the Superior Court of the State of California remanded petitioner to custody.

The District Court of Appeal and the Supreme Court of California denied without opinions or hearings Petitions for Writs of *Habeas Corpus* thereafter filed.

Reasons for Granting the Writ

1. This court has never passed upon, and a decision of the highest court of the land is needed to settle, the issue as to whether or not in our society, as today constituted, persons who are sincere in their belief in Nudism and who commit no anti-social or immoral acts may be completely and absolutely prohibited by a municipality from practicing Nudism pursuant to their sincere belief.[3a]

[3a] Research has revealed that but four reported cases that can be said to have been concerned with Nudism. And in only one of them, *Ex Parte*

All will agree that the Constitution affords to all persons the maximum freedom of personal liberty consistent with the protection by society from those activities which are harmful to it. Always there is the question in determining how far personal liberties shall be permitted to operate as to where "the other fellow's nose begins." Nudism is an idea in which many persons believe. It is also an idea by reason of the belief in which many persons are being put in jail—not because they are committing unlawful acts but because they are practicing Nudism. This court should, therefore, pass upon the question as to whether Nudism itself, with nothing more, should not be permitted to live or whether it is of such a nature as to permit of its demise. In other words, does not our society, as exemplified by the constitutional guarantees, protect a person in his belief that good health and high morals may be achieved in the practice of Nudism at such times and places where others will not be offended? At least is this not a right where no illegal or immoral acts occur? Constitutionality stated, does not the concept of the "clear and present danger rule" protect this phase of living where, as here, there is no promiscuity or immorality?

Porter, 141 Fla. 711, 193 So. 750, was there actually an ordinance probihiting the practice of Nudism. The case was decided on another point, however, and the question of the validity of the prohibition was never reached. In *People* v. *Burke,* 267 N. Y. 571, affg. 243 App. Div. 83, the court refused to hold that the practice of Nudism as such violated statutes against "openly outraging public decency" or "indecent exposure" or "maintaining public nuisance" or "permitting building to be used for nuisance," while *People* v. *Ring,* 267 Mich. 657, 255 N. W. 373, held that the operation of a nudist camp did violate a statute against lewd, lascivious or obscene conduct. *Parmalee* v. *United States,* 113 Fed. (2d) 729, held that in a book about Nudism, the presence of pictures showing what activity Nudists did in a camp did not violate the Federal Statute against importing obscene books into the country.

Legal literature on the subject as such is scarce. But see: 33 Mich. L. R. 936; 73 Solicitors Journal 505; 44 Dickinson Law Review 39; 39 Michigan Law Review 526; 69 U. S. Law Review 346; 65 U. S. Law Review 59; 74 Solicitors Journal 711; 26 Michigan Law Review 682, 93 ALR 997.

The many persons who believe in Nudism constitute a minority whose rights are entitled to this court's protection just as are the rights of other minorities in other fields of human conduct. They are entitled, therefore, to a consideration by this court of those rights.

2. This court has given broad expression to the doctrine of the "clear and present danger rule" as being a "working principle"[4] to determine "where the individual's freedom ends and the State's power begins."[5] But those cases have involved the exercise of expression through the medium of the tongue or pen. This court has never passed upon the question as to whether or not that rule also applies to freedom of expression through the medium of action. That. is whether or not there is also, with in the framework of the constitutional principle evolved, the right to practice one's social, economic or political belief as well as to give oral or written notice of it.

The case at bar for the second time gives this court the opportunity to pass upon that fundamental issue.

The writ, therefore, should issue.

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[4] *Bridges v. California*, 314 U. S. 252, 263.

[5] *Thomas v. Collins*, 323 U. S. 516, 529.

ARGUMENT

I

Nudism is a social belief which, like any other social, economic or religious belief, can be proscribed only if the practice of the belief violates the "Clear and Present Danger" Rule.

A. *Unless a practice involving social beliefs or a course of conduct is anti-social, or against public peace or good order, the State cannot restrict the exercise of the personal liberty to practice that belief.*

It is the genius of our constitutional system of government that we start with the proposition that all persons living under the protection of that Constitution are free to act as they will so long as that action does not interfere with the right of society to protect itself from detrimental acts.

In the matter of the advocacy of particular beliefs through the medium of speech or assembly this rule has been expressed by this court as the "clear and present danger rule."[6]

But this right to act so long as one's actions are not anti-social or against the peace or good order of the community is not confined to matters or opinions concerning economic or political or religious beliefs. It extends to all matters of social belief. Particularly is this true with regard to matters concerning the "privacies of life."[7]

In the case at bar it must be clearly borne in mind that the practice of Nudism itself is sought to be prohibited by the statute. There is nothing to indicate that any anti-

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[6] *Thomas* v. *Collins*, 323 U. S. 516; *Bridges* v. *California*, 314 U. S. 252.

[7] *Weeks v. United States*, 232 U. S. 383, 390; *Entick v. Carrington*, 19 How. St. Tr. 1029; *Cf. United States v. Leftkowitz*, 285 U. S. 452, 466.

social or immoral acts took place or that there was any clear or present danger that they would take place. It is purely and simply an attempt on the part of the City of Los Angeles to prevent this petitioner and others of like belief to practice that belief, the sincerity of which was never questioned. There is no attempt on the part of petitioner to force her beliefs upon others, nor to practice her beliefs in public or even where those who are not like minded would view the practice or be offended by it. Thus the record shows that the premises were far away from any habitation or public place (P. 2 of Exh. 1); it was a secluded spot, entrance to which was only permissible to those who were sincere believers in Nudism (P. 2 of Exh. 1). And nowhere in the record is there the slightest hint that any but normal healthful and moral pursuits were being carried on.

The beliefs which the ordinance in question seeks to prohibit are these:

> A belief in the essential wholesomeness of the human body and all its functions;
>
> A belief in inculcating in all persons a desire to improve and perfect the body by natural living in the out-of-doors;
>
> A belief that sunshine on the entire body is a basic factor in maintaining radiant health and happiness;
>
> A belief that the health of the nation will be immeasurably advanced through the wide acceptance of the principles and standards advocated by the American Sunbathing Association;
>
> A belief that presentation of the male and female figures in their entirety and completeness needs no apology nor defense and that only in such an attitude of mind can true modesty be found.

Thus it is clear that there is here involved another minority belief which is entitled to constitutional protection. It

is a belief the practice of which, unless in and of itself action which violates the clear and present danger rule, cannot constitutionally be proscribed.

B. *The statute, proscribing as it does social beliefs and practices (as distinguished from ordinary commercial transactions) is subject to searching inquiry as to its constitutionality and is not buttressed with the ordinary presumption of validity.*

This rule of constitutional construction was recognized in *United States* v. *Carolene Products Co.*, 304 U. S. 144, 153, and is now clearly the guide to legislation seeking to curtail the expression, by word or act, of social beliefs. (*Thomas* v. *Collins*, 323 U. S. 516, 530.)

Especially is this true where the legislation is directed against a particular minority or "victim" of special legislation here—the Nudists. In the *Carolene Products* case *supra* this page this Court said:

> "Prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities and . . . *may call for a correspondingly more searching judicial inquiry.*" (Italics added.)

And no showing was made by the State, to overcome the presumption of invalidity, that there was any danger clear, present, or otherwise of the taking place of any anti-social, immoral or other act that the State has the right to prevent.

C. *Heterodox social practices of all types including the practice of Nudism are entitled to full freedom of expression subject only to the "Clear and Present Danger Rule."*

In *West Virginia Board of Education* v. *Barnette*, 319 U. S. 624, the practice of the belief that the salute to the

Flag violated one's conscience was upheld by this Court as entitled to protection. So the requirement that all school children must partake in the ceremony was declared invalid as to Jehovah's Witnesses. Despite strong resentment on the part of the majority of the community (see Brief of the American Legion), this Court recognized that the Board of Education had gone too far in curtailing the practice of belief.

There are, unquestionably, certain practices of belief that the State has the right to prevent—for example, polygamy. (*Cleveland* v. *United States*, 91 L. ed. (Adv.) 1.) But such practices are admittedly anti-social in and of themselves.

The practice of Nudism, calling for the high morality that it does, falls rather with the Flag-Salute type of case rather than with the polygamy type of case. It should receive the same constitutional protection.

II

The practice of nudism itself, without more, does not constitute a clear and present danger to society.

A. *Nudism is neither obscene, immoral, anti-social nor against the public peace or good order.*

It must always be borne in mind that Nudism, as practiced and as shown by the record in this case, does not involve display, exhibitionism or the foisting of the belief upon those who are not in sympathy with it. It involves the practice of the belief away from public places and only in the presence of those who are in agreement, and it involves the commission of no immoral or otherwise illegal acts.

The courts so far in sustaining the ordinance have sustained the proposition that the human body itself is something inherently immoral or obscene and that the view of

the human body as created by God is a view so inherently bad that society, in order to protect itself, must prohibit it.

That the contrary is true will be clearly and unquestionably demonstrated below. But for the moment it should be realized that what is happening is this: Legislators, either through a lack of understanding of the subject or through lack of information on the subject, have enacted into immovable law what amounts to prejudice against a small minority. Since, as was shown to the other courts, and as will be pointed out here, Nudism itself is not bad nor has it a tendency to be so, an insular unorthodox group is being deprived of the freedom, which is its right under the Constitution solely by reason of the prejudice of the majority and not by reason of any danger to society.

It is, indeed, amazing to find that the scientists in the field—sociologists and psychologists—are at one in their findings that the practice of Nudism leads not to immorality or obscenity but to morality and wholesome living. And of course the purely health-giving aspects of Nudism cannot be gainsaid.

And judicial recognition has been given these facts. Thus in *Parmelee* v. *United States*, 113 Fed. (2d) 729, 734, the court said:

> "It cannot be assumed that nudity is obscene *per se* and under all circumstances. . . . And from the teachings of psychology and sociology, we know that the contrary view is held by social scientists."[7a]

There is present in the record of this case ample proof to sustain this finding.

The conservative Encyclopaedia Brittanica concludes that "clothing . . . almost always tends to accentuate

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[7a] See 33 Michigan Law Review 936 and 73 Solicitors Journal 505 where it is urged that in this day and age the practice of Nudism should be recognized as a right.

rather than to conceal the difference between the sexes" and that "even to modern eyes a figure partially clad appears far more indecent than a nude . . ."

7 *Encyclopaedia Brittanica* 649 (Exh. 2)

Professor E. A. Westermarck, whose monumental achievement on The History of Human Marriage is the recognized work in the field, reviews studies that have been made as to the effect of nakedness and concludes: "While nakedness is not exciting if the eye is used to it, covering or half covering readily becomes so."

1 *The History of Human Marriage* 554 (P. 1 of Exh. 3)

Professor Knight Dunlap of the University of California at Los Angeles concludes: "When we shall have returned to the primitive basis of clothing as a means of protection and nothing more, we will have lost most of our problems of sexual morality and sexual immodesty will have disappeared along with its reflection sexual modesty."

1 *Journal of General Psychology* 64 (P. 3 of Exh. 6)

And Professor Howard C. Warren reaches the same conclusion:

". . . Where the entire group are unclothed, the sight of the naked body ceases to arouse curiosity. Nudity is accepted as a natural condition. Since there is nothing to focus the attention on any specific part, one has merely the impression of the body as a whole, and sex differential no longer possess special significance.

". . . The writer's observations and the testimony of others indicate that social nudity is not productive of eroticism. There is less sexual excitement, less tendency to flirt, less temptation to ribaldry, in a nudist gathering than in a group or pair of fully clothed young people.

". . . The taboo is present so long as any part of the body is covered, not for protection but for concealment. This distinguishes genuine nudism from the near nudism of athletics and the pseudo-nudism of the stage."

40 *Psychological Review,* 160 (P. 1 of Exh. 7)

Havelock Ellis has said:

> "When familiarity with the naked body of the other sex is gained openly and with no consciousness of indecorum, in the course of work and of play, in exercise or gymnastics, in running or in bathing, from a child's earliest years, no unwholesome results accompany the knowledge of the essential facts of physical conformation thus naturally acquired. The prurience and prudery which have poisoned sexual life in the past are alike rendered impossible."
>
> *Studies in the Psychology of Sex,* P. 111, Vol. IV (P. 1 of Exh. 5)

And Professor Elizabeth B. Hurlock teaches that:

> "It is unquestionably a well known fact that familiar things arouse no curiosity, while concealment leads enchantment and stimulates curiosity. A slightly draped figure, with just enough covering to suggest the outline, is far more alluring than a totally naked body."
>
> *The Psychology of Dress,* P. 18 (Exh. 8)

Additional scientific evidence is pointed in Exhibits 2 through 8. Noteworthy is the fact that there is no disagreement among the scientists in the field—a phenomena which is not usually found concerning so controversial a subject.

The high morality and purpose of Nudism is pointed out to this court succinctly and clearly in Exhibit 9. Here in a few words are summarized the beliefs of Nudism to

which petitioner subscribes (P. 3 of Exh. 1) and the practice of which the ordinance prohibits:

"Our goal is the healthy mind in the healthy body. This is not only a creed but a way of life. Sun, light and air are vital conditions of human well being. We believe these elements are insufficiently used in present-day life, to the detriment of physical and moral health. For the purpose of health and recreation and for the conditioning of man to his world we offer a new social practice, based on the known wholesome value of exposure to these elements and in the spirit of naturalness, cheerfulness, and cleanness of body and mind that they symbolize. We aim to make the fullest possible use of sun, light and air by a program of exercise and life in the open in such a way as will result in the maximum physical and mental benefit.

"We believe in the essential wholesomeness of the human body, and all its functions. We therefore regard the body neither as an object of shame nor as a subject for levity or erotic exploitation. Any attitude or behavior inconsistent with this view is contrary to the whole spirit of the society and has no place among us.

"The practice of our physical culture tends toward simplicity and integrity in all ways. We counsel for our members the sane and hygienic life. We reserve the right to impose abstinence from stimulants and intoxicants at our meetings and on our grounds.

"We invite to our membership persons of character of all ages and both sexes. Our purposes are not exclusively physical or cultural or esthetic but rather a normal union of all these. We make no tests of politics, religion or opinion provided that these are so held as not to obscure the purposes of the Movement. It is intended that the Movement shall be representative of the whole social order."[8]

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[8] See also: *The Body Taboo,* Shaw Publishing Co., Washington, D. C. 1937, and the extensive bibliography listed in Flügel, *The Psychology of Clothes,* Hegarth Press, London, 1940.

In the face of this overwhelming evidence to the contrary the ordinance is a clear and unconstitutional bar to that freedom vouchsafed by that instrument. This is no mere criminal statute which society requires to protect itself. It is purely and simply the encasing in the armor of legislation the prejudice of the majority without there being any reasonable basis therefor.[9]

III

The Ordinance Is Arbitrary, Vague, Indefinite and Uncertain

A

The word "nude" is not defined in the ordinance and standing alone does not furnish the certainty of definition required of a criminal statute.

A criminal statute which in its terms is so vague ordinary men would differ as to its meaning violates due process of law.

Connolly v. *General Construction Co.*, 269 U. S. 385, 391-393.

The ordinance by not defining what is meant by the word leaves to guess-work the question of just what or what amount of clothing must be worn in order that the statute not be violated. For example, if women are required at the camp to wear trunks but not halters, are they in the "nude" and is the ordinance violated? Conversely, if they must wear halters but need not wear trunks do they violate the ordinance? Similarly, if either the men or women wear

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[9] Cf. Sumner, *Folkways*, p. 434, et seq, wherein it is demonstrated that nakedness itself cannot be anti-social or immoral for throughout the world concepts and attitudes differ immensely; an exposure of one part of the body or all of it may be moral or immoral, obscene or chaste depending upon where one happens to be. Such a shifty standard cannot be the basis for restriction of liberty.

shoes or hats only have they committed a crime? Are they then in the nude?

These, and like questions, the ordinance does not answer. Consequently it must fall for "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids."

Lanzetta v. *New Jersey,* 306 U. S. 451, 453.

If the city council had in mind that certain specific parts of the body should not be exposed, it could have easily and clearly said so and not have left the meaning to be guessed at. Always it is to be borne in mind that this is a criminal statute and where such "a statute is so vague as to make criminal an innocent act, a conviction under it cannot be sustained."

Winters v. *New York,* U. S. Sup. Ct. No. 3, Oct. Term, 1947, 16 Law Week 4279.

Conclusion

It is therefore respectfully requested that the Petition for Writ of Certiorari to the Supreme Court of the State of California be granted and that the petitioner be released from custody.

A. L. Wirin,
Fred Okrand,
Counsel for Petitioner.

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

IN THE

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OCTOBER TERM, 1947.

No. 805

LURA D. GLASSEY,

Petitioner,

vs.

C. B. HORRALL, Chief of Police of the City of Los Angeles.

Answer to Petition for Writ of Certiorari to the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles.

Statement of the Case.

The facts in this case are quite simple. Petitioner was not charged with being a Nudist, or with practicing Nudism. She was charged with conducting a camp in violation of subsection (h) of Section 47.50 of the Los Angeles Municipal Code, regulating the conduct of nudist camps.

Subsection (h) of Section 47.50 of the Los Angeles Municipal Code (sometimes hereafter referred to as Section 47.50 only) [R. p. 9, fol. 14] declares it to be unlawful to *operate, manage* or *conduct* a camp, or other place of resort,

> "wherein three or more *persons not all of the same sex* are permitted or allowed to commingle in the

nude; or wherein *persons are permitted or allowed to view persons of the opposite sex in the nude.*" (Emphasis ours.)

The petitioner was charged with operating, etc., a camp, etc., wherein three or more persons not all of the same sex were permitted and allowed to commingle in the nude. [R. p. 10, fol. 15—Complaint.]

Assuming for the sake of argument that one who believes in the tenets of Nudism might have cause to complain were he entirely deprived of the right to practice his beliefs, it does not follow as a matter of fact or of law that a person who conducts such a camp is a believer in or follower of such social concepts.

Questions of Law Involved.

The petitioner states the first question of law presented to be whether subsection (h) of Section 47.50 *"which prevents the operation of any place where Nudism may be practiced,"* as applied to the petitioner, unconstitutionally restricts the petitioner's personal liberty. (Petition p. 2—emphasis added.)

To state the matter charitably, petitioner's allegation, emphasized above, that the ordinance prevents the operation of any place where Nudism may be practiced, is a misrepresentation of both the terms of the subsection and of the effect thereof. The only thing prohibited by the subsection is the conduct of a camp in which (1) a commingling of the sexes is permitted, or (2) in which persons of the opposite sex are permitted to view each other in the nude. Because of the fact that petitioner was charged only with doing the act designated as (1) above [R. p. 10, fol. 15—Complaint], we shall confine our discussion to such portion of the subsection.

The subsection involved does not prohibit the conduct of camps in which the sexes are prevented from commingling while in the nude and nude persons are not viewed by persons of the opposite sex. It does not prevent the conduct of camps in which persons of the opposite sex may commingle at times when they are not in the nude.

Properly stated, question of law number one is:

Is a subsection of an ordinance which does not prohibit the practice of Nudism, but does prohibit the conduct of camps where persons of the opposite sex commingle in the nude, unconstitutional by reason of restricting the liberty of persons conducting camps in a manner prohibited by the ordinance provision involved?

Petitioner states her second question as follows:

> "Does the practice of Nudism pursuant to a sincere belief in the principles of Nudism where there is no showing of obscene or immoral conduct constitute an exercise of freedom of speech, within the guarantee of the Due Process clause of the 14th Amendment?"

In view of the fact that the subsection here involved does not prohibit the practice of Nudism, but at most constitutes only a *regulation* of such practice, it would appear, for reasons more fully set out in the Argument herein, that this question is not presented by the record before the court.

It is not improper, however, to point out at this time that, instead of prohibiting the practice of Nudism, Section 47.50 specifically provides for the licensing of camps in which such cultism may be practiced, subject to certain regulations concerning the method of conducting such camps. [R. p. 8, fol. 13.]

SUMMARY OF THE ARGUMENT.

I.

THE RECORD DOES NOT PRESENT A CASE WHICH, UNDER THE PRACTICE OF THE COURT, REQUIRES A DECISION UPON THE FEDERAL QUESTION.

II.

THE ORDINANCE DOES NOT UNDULY RESTRICT THE PRACTICE OF NUDISM.

III.

THE PROHIBITION OF ACTS WHICH ARE OFFENSIVE TO MORAL CONCEPTS IS WITHIN THE POLICE POWER OF THE STATE, AND SUCH PROHIBITION DOES NOT OFFEND AMENDMENTS ONE OR FOURTEEN OF THE FEDERAL CONSTITUTION.

IV.

RELATION OF THE "CLEAR AND PRESENT DANGER DOCTRINE" TO THE ORDINANCE DISCUSSED.

V.

THE ORDINANCE IS NOT ARBITRARY, VAGUE, INDEFINITE OR UNCERTAIN.

VI.

CONCLUSION.

ARGUMENT.

I.

The Record Does Not Present a Case Which, Under the Practice of the Court, Requires a Decision Upon the Federal Question.

The court in *The Rescue Army v. The Municipal Court of the City of Los Angeles,* ..... U. S. ..... (91 L. Ed. Adv. Sheets 1221), has again emphasized the fact that, although jurisdiction be shown, it is the policy of the court to refrain from deciding a federal question unless it appears from examination of the record that the question is squarely presented.

It does not appear that the petitioner was or is a person who is a believer in Nudism, or that she ever has practiced Nudism. She was charged with and convicted of conducting a camp where persons of the opposite sex appeared in the nude. [R. p. 10, fol. 15—Complaint.] Assuming for the purpose of argument only that no one other than bona fide converts to the Nudist cult were allowed to enter the camp, it does not follow as a matter of law or fact that the person who is engaged in running such camp was herself a believer in the tenets of Nudism.

No person may require a court to decide the validity of a law unless it appears that the law infringes in some manner upon his own rights or liberties.

Hanneford v. Silas Mason Co., 300 U. S. 577, 583;

Virginian Ry. System v. System Federation No. 40, 300 U. S. 515, 558;

Utah Power & L. Co. v. Pfost, 286 U. S. 165, 186;

Massachusetts v. Mellon, 262 U. S. 447, 488.

Assuming that a believer in the tenets of Nudism, who is prevented by law from practicing his belief, has the right to ask this court to pass upon the validity of such a law, it does not follow that a person who, so far as the record is concerned, was operating a camp because of the profit or remuneration obtained thereby, and who, so far as the record is concerned, is not a worshipper at the Shrine of Nudism, has a right to ask this court to protect his property rights because the ordinance involved may infringe upon the personal liberties of converts to such cultism. It does not appear that there are not other camps reasonably situated in which those who are sincere believers in such cultism may practice the teachings of Nudism subject only to reasonable regulations concerning the manner of conducting such camps.

II.

The Ordinance Does Not Unduly Restrict the Practice of Nudism.

We do not set ourselves up as experts upon the subject of Nudism as a social belief. If we be correct in our understanding, the practice of exposing one's body to the sun and elements was originally conceived as a health measure, and was practiced for that purpose only. We have been informed that subsequently there was inculcated into the *credo* of the sect an additional doctrine, that the association of the sexes in the nude tends to promote sexual purity in the community. Just what is the underlying theory we confess our inability to comprehend, unless

it be the old adage that "familiarity breeds contempt" and therefore association in the nude tends to decrease the desire or temptation to indulge in lustful acts.

We find it unnecessary to determine whether such belief is or is not a part of the creed in as much as it appears from the statement of the principles and standards set out in Exhibit I of petitioner's petition to the Supreme Court of California that the association of opposite sexes in the nude is not a necessary incident to consummation of the objects sought to be attained. [R. p. 6, fol. 10.]

We also note in petitioner's argument in support of her petition that she sets forth the alleged beliefs of the cult of Nudism in five separate sentences. (Petition p. 8.) We respectfully submit that fulfillment of each of such beliefs which, according to petitioner, comprise the creed or tenets of the social belief called Nudism, may be fully and completely realized and enjoyed without the association of the opposite sexes while in a nude condition.

It therefore follows that a subsection of an ordinance which prohibits the conduct of camps where persons of the opposite sex commingle in the nude does not deny any member of the cult the right to practice Nudism according to the tenets of his social creed.

III.

The Prohibition of Acts Which Are Offensive to Moral Concepts Is Within the Police Power of the State, and Such Prohibition Does Not Offend Amendments One or Fourteen of the Federal Constitution.

The position of petitioner appears to be that a social concept, whatever its nature, comes within the protection of the First Amendment, and the indulgence in or practice of such social concept is entitled to the same protection afforded by such Amendment to the practice of religion. We do not understand petitioner to urge that Nudism is practiced as a means of worship of some Supreme Being. To say that her theory is at least novel is an understatement.

It has been often said that for the purpose of determining the meaning and application of a statute the court would attempt to ascertain what the legislature intended to accomplish by a given statute. Likewise it is proper to consider what our forebears intended to protect by the First Amendment. In the instant case, in as much as no question of free speech is involved, we may confine our inquiries to what object was sought to be accomplished by the provision for freedom of worship.

However limited may be the right of courts to take judicial notice of facts, certainly this court can take judicial notice of the fact that at the time of the colonization of America there was an established English church and that certain colonies were established as a refuge from conformance to such State religion. Likewise the court can take notice of the fact that nations other than England had State religions and that persons not conforming to

such religions were persecuted. Many of the original colonists came to the new continent to enjoy "religious freedom" but, sad to say, too often their idea was not religious freedom, but freedom to worship in their own manner and to compel others to conform to their form of worship. This backdrop reflects the light upon the First Amendment so that we can see that the citizens of the new nation intended that there could never be a State religion which would prevent them from worshipping God in such manner as they saw fit. It was never intended that the First Amendment protect the practice of social ideologies which offended public morals or decency. However strong our imagination may be, we find it impossible to imagine that our forefathers, who would have been shocked at the sight of a woman in a modern evening gown, to say nothing of one on the streets in bra and shorts or on the beach in a modern bathing suit, ever intended the First Amendment to be used as a shield behind which to carry on Nudism.

This court has held that laws which prohibited plurality of wives were valid, even as to those who practiced such custom as a religious duty or belief.

> *Reynolds v. United States,* 98 U. S. 145;
> *Davis v. Beason,* 133 U. S. 333;
> *Church of Jesus Christ of Latter Day Saints v. United States,* 245 U. S. 366.

Certainly the power to enact prohibitive measures aimed at protecting the public morals is no less with respect to social ideologies than it is with respect to religion.

That the protection of public morals is a function within the police power of the state is so well settled as to need no citation of authorities in support thereof.

IV.

Relation of the "Clear and Present Danger Doctrine" to the Ordinance Discussed.

Petitioner urges that the practice of Nudism itself, without more, does not constitute a clear and present danger to society. (Petition p. 10.) We have found no cases in which courts have attempted to apply such doctrine to ordinances aimed at the protection of public morals and decency.

In view of the fact that during argument of the *Rescue Army* and *Gospel Army* cases a member of this court indicated that it could not be seen wherein the clear and present danger doctrine was applicable to these cases, we are inclined to think that such doctrine has no application to the instant case. For that reason it is with some considerable hesitancy that we risk trespassing upon the time of the court by discussing the point. However, because of prevalent uncertainty in the minds of the judiciary as well as in the minds of the legal fraternity concerning the scope of the doctrine, we feel impelled to discuss the subject briefly.

The question which arises is: What constitutes a clear and present danger?

Using a physical illustration, we will suppose that a number of children were playing on the street and a dog affected with rabies appeared on the street two blocks away. Was there a clear and present danger that some of the children might be attacked by the dog? Or would the possibility that some alert citizen might kill the dog before it reached the children defeat the clear and present danger doctrine until the dog got within a few feet of them? Or would the fortuitous possibility that such dog

might turn aside or pass the children in its path, thus doing them no harm, impel the conclusion that there was no clear and present danger until and unless the dog was in the act of biting a person?

Applying the same reasoning to freedom of speech and press as it may apply to national safety, and considering the fact that the writer of this brief several years ago sat at the counsel table when opposing counsel, representing a certain alleged party which we here leave unnamed, said in argument to the court that such political party intended to overthrow the government of the United States, peacefully if possible, by force of arms if necessary, we wonder whether the doctrine ceases to be operative when the legislature, from facts before it, has reasonable grounds to believe that, unless certain action is taken, jeopardy to the peace of the State will result, or must it wait to act until violence occurs and the streets run red with blood?

We confess our inability to understand from petitioner's brief wherein or how she feels that the doctrine applies to ordinances aimed at preserving morality and decency. Admittedly the clear and present danger doctrine was originally conceived as a yardstick (if really intended as a yardstick, see concurring opinion of Mr. Justice Frankfurter in *Pennekamp v. Florida*, 328 U. S. 331) for the measure of statutes which, under the guise of protecting the security of the nation, might unduly circumscribe the exercise of certain rights guaranteed by the federal Constitution. Just where, in the opinion of the petitioner, does the clear and present danger doctrine become a controlling factor with respect to the ability of the states to legislate with respect to morals and decency? Does it

permit the enactment of ordinances regulating the practice of Nudism when and if it appears that fornication and inhibited sexual practices are indulged in, or must the state wait until such time as by reason of sexual conduct the state becomes burdened with the support of children begotten of such sexual excesses?

The answer does not lie in the statement that in the camp conducted by the petitioner no improper acts are permitted or indulged in, any more than it could be urged by the proprietor of a drug store that, because the druggist properly conducted his drug store, laws against the sale of adulterated drugs are void as to him, or for the manufacturer of food products to say that because he never prepares adulterated foods, laws which prohibited adulteration are invalid.

Regulatory laws are for the prevention of evil before it occurs, and punishment for violation thereof is prescribed as a means of prevention and not for punishment for the sake of punishment.

It is presumed that legislative bodies, when adopting measures under the police power have possession of facts which justify their action (*South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U. S. 177, 191), and in line with such rule it must be assumed that the facts before the City Council justified the conclusion that conduct of nudist camps in the City of Los Angeles, in which persons of the opposite sex were allowed to commingle, resulted in conditions detrimental to public morals and welfare.

V.

The Ordinance Is Not Arbitrary, Vague, Indefinite or Uncertain.

Petitioner urges (Petition p. 15) that the ordinance is void because of the failure to define the word "nude." Such word is defined in all standard dictionaries, and is a word meaning of which is commonly understood.

The requirements of reasonable certainty do not preclude the use of ordinary terms to express ideas which find adequate interpretation in common use and understanding.

> *Sproules v. Binford,* 286 U. S. 374, 393, and numerous cases therein cited.

The Appellate Department of the Superior Court found that the ordinance was not void by reason of uncertainty. In this connection we note our inability to find in the printed record, or in petitioner's petition, a copy of the decision of the Appellate Department. It has always been our understanding that petitioner must either point in his petition to where this court may find a challenged decision published, or include a copy of such decision in his papers. This the petitioner has failed to do. However, in order that this court may not be under the necessity of speculating as to what the State court decided in the case, we attach hereto as Exhibit A, a copy of such decision.

VI.

Conclusion.

That this ordinance was enacted in its entirety for the purpose of protecting public morals and decency cannot well be denied. That the State cannot regulate the beliefs of citizens with respect to subjects political or religious is now well established, and, at least for the purpose of the instant case, we may assume that the same doctrine applies to social beliefs. It is just as well established that the State may circumscribe the methods of practicing such beliefs.

No one who has viewed the modern form of dress, and in particular the abbreviated costumes worn at our bathing beaches, can well deny that since the days of the foundation of the Republic major changes with respect to what is decent and indecent has occurred in the minds of the general public. Even so, we think it is within the power of a legislative body, acting under the police power, to require that, when persons of opposite sexes commingle in camps, they be clothed in something less revealing than a smile and a cloak of innocence, and that they wear at least the equivalent of the fig leaf with which Adam and Eve are said to have clothed themselves in the Garden of Eden.

We submit that the petition for certiorari should be denied.

Respectfully submitted,

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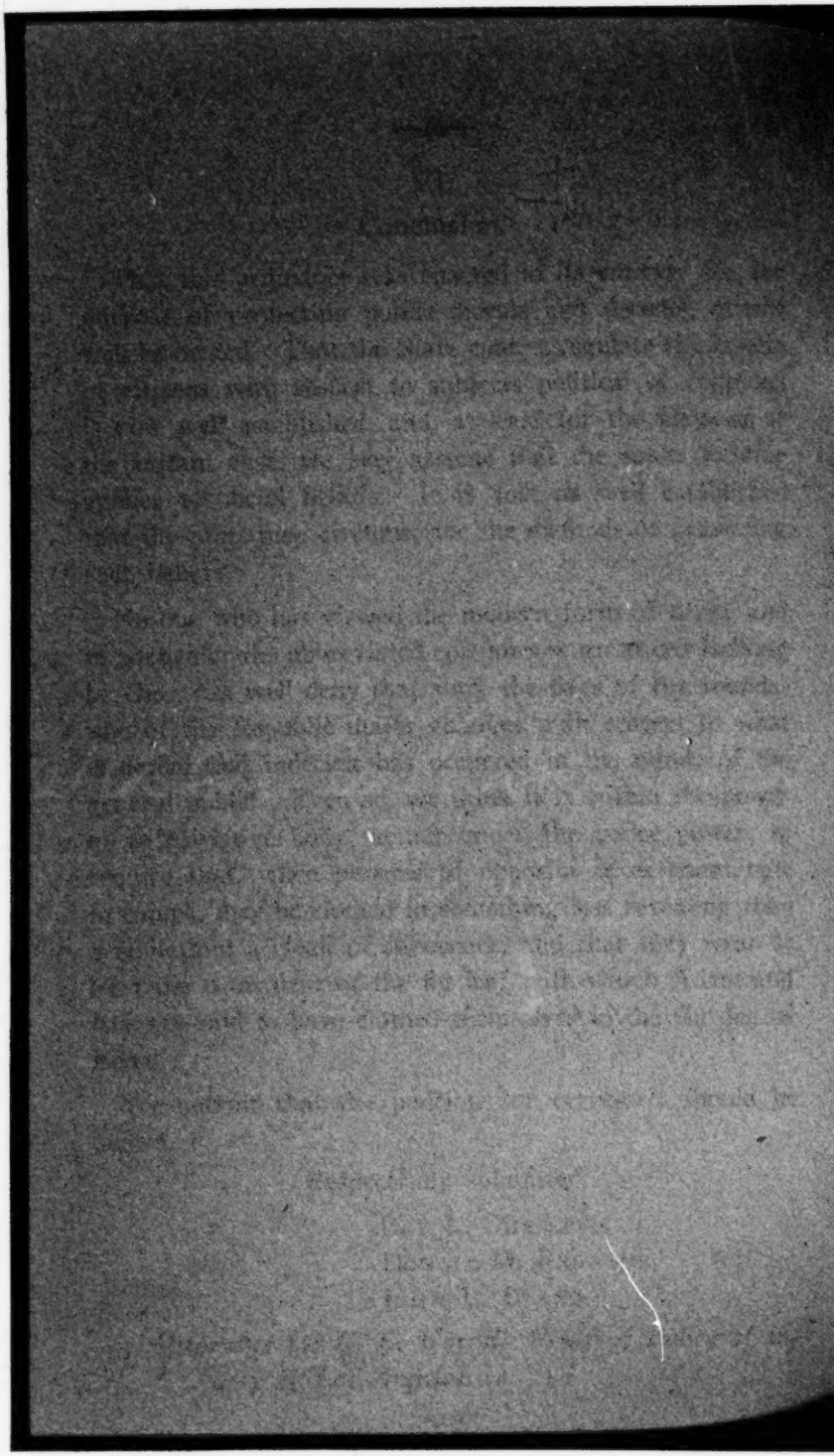

EXHIBIT A.

In the Appellate Department of the Superior Court, County of Los Angeles, State of California.

People of the State of California, Plaintiff and Appellant, vs. Lura D. Glassey, *et al.*, Defendants and Respondents. No. CR A 2256.

MEMORANDUM OPINION.

Appeal by plaintiff from an order made by the Municipal Court of the City of Los Angeles, Byron J. Walters, Judge. Affirmed.

The charge upon which defendants were convicted is laid under subdivision (b) of Section 47.50 of the Los Angeles Municipal Code. This subdivision is not dependent upon any of the other provisions of Sec. 47.50 for its meaning or effect, but is entirely severable from them. Appellants' several arguments assuming either that other parts of the section are to be read into subdivision (h), or that the complaint charges a violation of such other parts are therefore passed without further discussion.

We do not find subdivision (h) to be invalid either for uncertainty or as unduly restricting personal liberty. Neither does it conflict with Sec. 311, subd. 1 of the Penal Code. That section deals only with the conduct of a person who exposes himself, while the prohibition under consideration affects only those who provide a place where that may be done.

The evidence that defendants operated the place is not legally insufficient to support the verdict in that respect.

While it may have been unnecessary for the court, in its instructions, to mention to the jury the parts of Sec. 47.50 other than subd. (h), the court clearly informed them that the defendants were not charged with violation of these parts of the section and then gave them the purport of subd. (h) under which the charge was laid. We find no prejudicial error in the giving or refusal of instructions.

SHAW, *Presiding Judge.*

We concur.

BISHOP, *Judge.*

STEPHENS, *Judge.*